



Billing Code: 4510-HL

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 641, 655, 656, 658, 667, 683, and 702

Office of the Secretary

29 CFR Parts 2, 7, 8, 10, 13, 18, 24, 29, 38, and 96

Office of Labor-Management Standards

29 CFR Part 471

Wage and Hour Division

29 CFR Parts 501 and 580

Occupational Safety and Health Administration

29 CFR Parts 1978 through 1988

Office of Federal Contract Compliance Programs

41 CFR Parts 50-203 and 60-30

RIN 1290-AA39

Rules Concerning Discretionary Review by the Secretary

AGENCY: Office of the Secretary

ACTION: Final rule.

SUMMARY: The Department of Labor is issuing this final rule to establish a system of discretionary secretarial review over cases pending before or decided by the Board of Alien Labor Certification Appeals and to make technical changes to Departmental regulations governing the timing and finality of decisions of the Administrative Review Board and the Board

of Alien Labor Certification Appeals to ensure consistency with the new discretionary review processes established in this rule and in Secretary's Order 01-2020.

DATES: This final rule is effective [insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Shepherd, Clerk of the Appellate Boards, at 202-693-6319 or Shepherd.Thomas@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Two of the four review boards within the Department of Labor were created by voluntary delegations of authority by previous Secretaries of Labor. Specifically, the Administrative Review Board (ARB)—which has authority to hear appeals from the decisions of the Department's Office of Administrative Law Judges (OALJ) about certain immigration, child labor, employment discrimination, federal construction/service contracts, and other issues—and the Board of Alien Labor Certification Appeals (BALCA)—which has authority over appeals from the decisions of the Employment and Training Administration's adjudication of foreign labor certification applications—were created, respectively, by a Secretary's Order and by regulation. Their existence is neither compelled nor governed by statute. Notably, before the ARB was created in 1996, many of the types of cases now subject to its jurisdiction were decided directly by the Secretary. Each board was also entrusted with the power to issue final agency decisions in the name of the Secretary. Previously, the Secretary's Order and regulations establishing the ARB and BALCA provide no mechanism by which the Secretary can review, where necessary, the decisions of the officers who exercise power on his behalf.

To ensure that the Secretary has the ability to properly supervise and direct the actions of the Department, the Department is establishing systems of discretionary secretarial review over the decisions of the ARB and decisions of and appeals before BALCA, which is being accomplished through this rule and the earlier issuance of a Secretary's Order governing the ARB. The Department's authority to effect these reforms derives from 5 U.S.C. 301, which authorizes the heads of agencies to regulate the internal operations of their departments; 5 U.S.C. 305, which provides for continuing review of agency operations; and the Secretary's authority to administer the statutes and programs at issue in ARB and BALCA proceedings. In combination, these statutes establish many of the powers of the Department within the Office of the Secretary, and give the Secretary wide latitude to delegate those powers to his subordinates on the terms he deems appropriate. Thus, the Secretary has the power to delegate his authority to appropriately supervise the adjudicatory process within the Department, and is now exercising that same authority to assert his decision-making prerogatives duly assigned to him by Congress by modifying the terms on which the members of the ARB and BALCA exercise his delegated authority.

The reforms to BALCA (and conforming edits to various Departmental regulations governing the ARB, BALCA, and the OALJ) preserve the existing structures by which the Department processes adjudications while giving the Secretary the option, in his sole discretion, to initiate review directly in a case where the Secretary's involvement is necessary and appropriate. Again, Congress has assigned the administration of various statutes to the Secretary of Labor, meaning that the Secretary is obligated to ensure that those laws are administered, executed, interpreted, and enforced according to law and Executive Branch priorities and policies. Under these reforms, the Secretary will rely on the ARB and BALCA to assist in

identifying cases where secretarial review may be warranted. Consistent with the practice of other agencies, the Department does not anticipate that the power of secretarial review will be used often. The Department similarly anticipates that secretarial review—while completely within the Secretary’s discretion as the officer assigned to administer the laws in the first place—will typically be reserved for matters of significant importance. With respect to the provisions revised by this rule under which decisions of the ARB become final, the Department notes that such decisions become final irrespective of whether a petition for secretarial review is filed under Secretary’s Order 01-2020. Parties are not required by Secretary’s Order 01-2020 to file petitions to exhaust their administrative remedies. *See Darby v. Cisneros*, 509 U.S. 137 (1993). Finally, the Department will ensure that the secretarial review process will be accomplished in a manner that complies with any applicable legal requirements.

Because of significant differences between how the ARB and BALCA operate, the systems of review for each board are designed somewhat differently. Most importantly, whereas with respect to the ARB the Secretary will not exercise review over cases until after a decision has been rendered, the regulations modifying BALCA’s authority allow the Secretary to assume jurisdiction over most cases even before a decision has been issued. This is because BALCA processes significantly more cases each year than does the ARB, and, due to the nature of the temporary visa programs and DOL’s role in administering these programs, does so much more quickly than does the ARB. As a result, under the BALCA regulations, the Secretary will be able to initiate review of a case even before BALCA has issued a decision.

The Department appreciates the expeditious nature of many types of BALCA proceedings, such as those involving temporary labor certification, and does not anticipate that the new system of secretarial review established over such cases will significantly disrupt or

otherwise impede the way such cases are currently processed. As noted above, the Department expects that secretarial review over BALCA decisions will, as with agency head review at other departments, likely not be exercised often. Further, the changes to 29 CFR 18.95 provide that a BALCA decision is the Secretary's final administrative decision unless the Secretary assumes jurisdiction over the case. For example, once the BALCA issues a decision that affirms the Certifying Officer's decision or reverses and remands for further processing, the parties in the case will be able to proceed immediately to the next step of the application process, and will only be delayed in doing so if the Secretary later decides to undertake review. Moreover, the revised 29 CFR 18.95 limits any potential uncertainty that may exist because of the possibility of secretarial review by placing strict time limits on when the Secretary will have the option of assuming jurisdiction over a case.

II. Discussion of Changes

This final rule revises several sections of the Code of Federal Regulations including 20 CFR parts 641, 655, 656, 658, 667, 683, and 702; 29 CFR parts 2, 7, 8, 10, 13, 18, 24, 29, 38, and 96; 29 CFR parts 417 and 471; 29 CFR parts 501 and 580; 29 CFR parts 1978–1988; and 41 CFR parts 50-203 and 60-30 to harmonize the manner in which the ARB issues decisions on behalf of the Secretary under the Department's regulations with the scope of the final decision-making authority delegated to the ARB by the Secretary in Secretary's Order 01-2020. Specifically, references to final decisions of the ARB have been modified or removed to ensure that no regulation contradicts the terms on which an ARB decision becomes final under the Secretary's Order. Certain provisions governing the timing of petitions for review to the ARB and when the ARB is required to issue decisions have also been amended to eliminate potential ambiguity or confusion over the distinction between when the ARB is required to issue a

decision and when such decision becomes the final action of the Department pursuant to the Secretary's Order.

This rule also revises 29 CFR part 18 by modifying the conditions under which a decision of BALCA becomes the final decision of the Department and by creating a process by which the Secretary of Labor can exercise discretionary review over cases pending before or decided by the BALCA. Technical amendments are also made to 20 CFR parts 655 and 656 to harmonize the manner in which BALCA issues decisions on behalf of the Secretary with the new system of discretionary review established in 29 CFR part 18.

The Department of Labor and the Department of Homeland Security (DHS) have determined that it is appropriate to issue a separate rule regarding the Secretary of Labor's review authority over H-2B cases under 29 CFR 18.95 to address the same issues addressed by this rule in the H-2B context. It is the Departments' intent to promulgate this separate rule after the publication of this rule. This determination follows conflicting court decisions concerning DOL's authority to issue legislative rules on its own to carry out its duties in the H-2B program. Although DOL and DHS each have authority to issue rules implementing their respective duties in the H-2B program, including rules providing for secretarial review, the Departments plan to make the amendments to the applicable regulations jointly to ensure that there can be no question about the authority underlying such technical amendments. This approach is consistent with the joint rulemaking governing the Temporary Non-Agricultural Employment of H-2B Aliens in the United States, 80 FR 24042 (Apr. 29, 2015) (codified at 8 CFR part 214, 20 CFR part 655, and 29 CFR part 503).

In order to ensure that all parties appearing before the ARB and BALCA have fair notice of the new systems of discretionary review established in this rulemaking and in Secretary's

Order 01-2020, the Secretary will not exercise his review authority over any decision of either Board issued before the passage of 30 calendar days from the date on which this rule becomes effective.

III. Response to Comments

On March 6, 2020, the Department simultaneously published a direct final rule (DFR) and a notice of proposed rulemaking (NPRM) to effect the reforms described above. The Department treated comments received on the companion NPRM as comments also regarding the DFR, and vice versa. We describe the NPRM and DFR together as the “NPRM–DFR.” Some comments raised concerns while others expressed support for the Department’s NPRM–DFR. After carefully considering the comments received, the Department determined that none of the comments required refraining to make the revisions set forth in the NPRM-DFR, as explained in more detail below, and has decided to issue this final rule, which, with the exception of one substantive change described below and some technical corrections,¹ is identical to the NPRM-DFR.

By its terms, the DFR became effective on April 20, 2020. However, because the Department received significant adverse comments on the NPRM-DFR, the Department has not exercised, and does not intend to exercise any authority under the provisions contained in the DFR, and the Department has not published in the Federal Register a document confirming the effective date of the DFR and withdrawing the NPRM. Rather, the Department is now issuing this final rule to respond to the comments received and to finalize the NPRM.

¹ Technical corrections have been made to 29 CFR 2.8; 29 CFR 7.1(d); 29 CFR 8.1(c); 29 CFR 10.57(c); 29 CFR 13.57(c); and 29 CFR parts 1978–1988.

The Department received multiple adverse comments to the NPRM-DFR. The commenters expressed concerns that the new systems of discretionary review in the NPRM-DFR and established in Secretary's Order 01-2020 would result in significant delays in the resolution of cases. Further, some commenters argued that secretarial review would result in inconsistencies in how the Department decides cases, and also faulted the NPRM-DFR for not specifying the standards under which the Secretary would exercise review, which some commenters suggested would jeopardize the fairness and due process afforded parties in Department adjudications. Other concerns raised by commenters included a purported lack of data or other justifications for the proposed system of discretionary review and objections to the propriety of the direct final rulemaking process. Finally, some commenters suggested that the rule should include more public reporting requirements to increase transparency with respect to how the Secretary exercises his review authority.

The Department believes that many of the objections raised by the commenters are already addressed by the provisions in the NPRM-DFR, and also notes that some of the concerns are about the contents of Secretary's Order 01-2020, which became effective on February 21, 2020, and was not the subject of this rulemaking. To the extent the commenters' concerns relate to Secretary's Order 01-2020, and not the rule, the Department addresses them here insofar as doing so is helpful in more fully explaining how the new systems of discretionary review work.

As explained earlier in this preamble, the Department does not anticipate that discretionary review will be frequently exercised. The vast run of cases decided by the Department will therefore be minimally affected in the rate at which they are processed. Importantly, the timeline set for when BALCA decisions become final under the new rule is unchanged, except with respect to cases over which the Secretary decides to exercise review.

Some commenters argued that, despite BALCA decisions becoming final upon issuance, employers would still be delayed in moving on to the next step of the visa application process because they would have to wait until the time period for secretarial review elapsed, and that the time periods in which the Secretary is permitted to undertake review are unnecessarily long. Commenters were specifically concerned with the timing available for the Secretary to invoke jurisdiction over a case and the lack of a deadline for the Secretary to make a decision, particularly regarding the H-2A program given the time-sensitive nature of the program. One commenter also suggested that the proposal is inconsistent with Section 218(e) of the INA.

The Department does not agree with these assertions. For one thing, the possibility that the Secretary may undertake review of a BALCA decision that has become final no more impedes an employer's ability to proceed to the next step in the visa application process than does the possibility that BALCA may consider, and possibly grant, a motion for reconsideration. Like the possibility of reconsideration, secretarial review will be uncommon and will not significantly delay action on a final BALCA decision. The time periods specified in this rule in which secretarial review is allowed are included to limit further the already minimal uncertainty that the chance of secretarial review might create for employers by placing a strict time constraint on when secretarial review is even possible. Finally, the Secretary's authority to review BALCA decisions does not conflict with the INA. If an employer requests a *de novo* hearing, they are entitled to that hearing in accordance with the Department's regulations. It is only after that hearing that the Secretary can exercise their authority to review the ALJ's decision from that hearing.

In response to one commenter's question of whether the Department will refund a filing fee paid to United States Citizenship and Immigration Services (USCIS) in the event the

Secretary undertakes review after the fee has been submitted, the Department notes that USCIS's refund policy is outside the Department's control. The Department notes, however, that this final rule reduces the limited risk of costs being incurred without a refund by allowing the Secretary to undertake review of cases pending before the BALCA before a decision is issued. That feature of the rule is formulated in recognition of the expeditious nature of many BALCA cases and ensures that, wherever possible, the Secretary may review a case before a party has filed a petition with USCIS.

As to the ARB, the Department notes that the ARB currently takes on average nineteen months to process a case; the up-to approximately two months' more² added by Secretary's Order 01-2020 to allow the Secretary time to determine whether to undertake review is not unreasonable. A modest extension of case processing times to give the Secretary the opportunity to ensure a case was properly decided is not, in the Department's judgment, inconsistent with the fair and timely adjudication of administrative appeals. The Department also believes that additional delay in the issuance of a final decision in the uncommon cases where the Secretary has undertaken review is appropriate and consistent with current practices at the Department.

Contrary to some commenters' concerns that secretarial review will lead to inconsistency and inefficiencies in Department adjudications because of the supposed haphazard manner in

² Under Secretary's Order 01-2020, the maximum period of time possible between when the ARB issues a decision and when the decision becomes final in cases where the Secretary does not undertake review is 63 calendar days, or nine weeks. In particular, the Order allows parties up to 14 calendar days to file a petition for secretarial review after the ARB's decision has been issued. The ARB then has up to 21 calendar days from the date the petition was filed to determine whether to refer the decision to the Secretary for review. In cases where the ARB has referred the decision to the Secretary, the Secretary has up to 28 calendar days from the date of referral to decide whether to undertake review. Thus, it is *possible* under the Order that a decision of the ARB would not become final until 63 calendar days after the decision was issued. *See Secretary's Order 01-2020—Delegation of Authority and Assignment of Responsibility to the Administrative Review Board*, 85 FR 13186, 13187-88 (March 6, 2020). However, there are a variety of circumstances that can shorten the period between when a decision is issued and when it becomes final. *See id.*

which they believe the review power will be exercised, the Department expects that it will in fact increase consistency and efficiency. Decisions of the Secretary under this rule and Secretary's Order 01-2020 are binding on all Department employees, and thus will serve as authoritative pronouncements within the Department on the statutes and regulations within the BALCA's and ARB's jurisdictions. That will serve to improve the consistency and efficiency of Department adjudications.

Commenters similarly suggested that the Department establish with more specificity both the standards the Secretary will use when deciding to exercise his authority and the standards that will govern the Secretary's review of a case. The Department does not believe that further specification of the standards that govern discretionary review is necessary to ensure the proper use of this power. When review is undertaken, the Secretary will adhere to all relevant sources of law, including, where applicable, 5 U.S.C. 557(b), which sets a standard of review for administrative appeals in formal adjudications. Further, providing that, generally, cases will be subject to secretarial review only if they present a matter of exceptional importance strikes the right balance between providing some clarity about when review will be undertaken while not unnecessarily precluding review in cases where secretarial involvement may be warranted under circumstances that are difficult to anticipate.

Several commenters raised concerns that the system of discretionary secretarial review does not adequately protect due process rights or risks undermining the fundamental fairness of DOL adjudications, including by failing to provide a mechanism for the parties to the proceeding to be notified when the Secretary exercises his discretion, the relevant issues under consideration, the lack of timeframe for the Secretary to make a decision, and a concern that the process will only be used to reverse decisions unfavorable to the Department. The Department

notes that this final rule contains a number of important fairness safeguards, and does not believe that further protections are necessary. Whenever review of cases pending before or decided by BALCA is undertaken by the Secretary, parties are to be promptly notified. The Secretary is also to receive the Appeal File and any briefs filed to ensure parties have an opportunity to be heard. Further, the Secretary must state his decision in writing, and the parties are to be promptly notified of his decision. Finally, this rule provides that no individual involved in the investigation or prosecution of a case will advise the Secretary on the exercise of review with respect to that case or a case involving a common nucleus of operative fact.³ This ensures the integrity of the review process by preventing the intermingling of functions within the Department. The Department also notes that the APA's separation of functions provision does not apply to the heads of agencies. 5 U.S.C. 554(d)(C). Finally, to the extent commenters have suggested that the Secretary will in all cases rule for the Department or a preferred party, or only consider undertaking review in cases where the Department lost before the BALCA, the Department regards those concerns as unfounded, and reiterates that the Secretary will decide all cases in accordance with law.

Some commenters' objected that the Department's reasons for establishing discretionary secretarial review do not sufficiently justify the rule, including failing to provide evidence or data that the ARB and BALCA issue obviously wrong decisions on a regular-enough basis to justify the establishment of this procedure.

The Department reiterates that ensuring the Secretary's ability to supervise and direct functions of the Department that are entrusted to his care by Congress is a compelling reason for

³ For example, a Department attorney who substantively participates in a hearing before BALCA would not advise the Secretary on that case if it were reviewed.

the rule taken on its own terms, and will promote good governance within the Department. The Department does not believe it is unreasonable for the Secretary to execute the duties he has been assigned by Congress. As for evidence, past experience with the unreviewability of BALCA decisions indicates that it is necessary for the Secretary to have the option of reviewing decisions issued on his behalf lest disagreement on law and policy within the Department lead to protracted uncertainty and intractable problems for regulated communities. *See, e.g., Withdrawal of Notice of Intent To Issue a Declaratory Order*, 85 FR 14706, 14708 (March 13, 2020) (recounting historical facts). The overall effect of this process will be to establish binding secretarial precedent on certain issues, which will ensure consistency in the Department's review and adjudication of matters, ultimately saving time and providing greater certainty for the regulated community.

Some commenters objected that this rule is being promulgated through improper procedures, and specifically argued that the DFR process is not permitted under the APA. The Department disagrees. The Department emphasizes that, while it does not believe it was required to issue this procedural rule through notice-and-comment procedures, it nevertheless gave the public the opportunity to comment through the NPRM, received public submissions on the NPRM–DFR, and is now issuing this final rule having considered and responded to those submissions.

As to commenters' suggestions regarding transparency and the public reporting of decisions rendered by the Secretary, the Department notes that Secretary's Order 01-2020 already requires the publication of such decisions issued following the review of an ARB decision. Because the Department agrees with commenters that publishing decisions is an appropriate and effective way for the public to be informed about how the discretionary review

power is exercised, the Department is adding an express publication requirement to 29 CFR 18.95(c)(2)(iii) for secretarial decisions issued after the review of cases decided by or pending before the BALCA. Commenters' other suggestions to promote transparency, including requiring BALCA to notify an employer of recommendations to the Secretary or for the Secretary to provide public explanations of his reasons for declining review in cases and providing the public with additional information about how the Secretary has handled specific referrals under Secretary's Order 01-2020, would, in Department's judgment, introduce more inefficiencies into the review processes than are warranted by the marginal benefits such transparency measures would generate.

Finally, the Department declines to grant some commenters' request for an extension of the comment period. The NPRM–DFR was not long or complex relative to other proposed rules issued by the Department. Further, the NPRM–DFR was made public on the Department's website on February 21, meaning interested parties have had notice of and have had the opportunity to examine it and to prepare comments for longer than the 30 days provided for comment. Some commenters argued that the disruption caused by the coronavirus pandemic, including the closure of law libraries or other institutions that commenters may use as a resource to submit comments, justifies an extension. The Department notes that while the pandemic has caused general disruption to the lives of all Americans, comments to proposed rules can be submitted electronically and do not rely on physical means of delivery or preparation that may be hindered by the pandemic, and that the research and work needed to prepare comments can also generally be carried on through electronic means.

To the extent that DOL received comments unrelated to the proposal to establish a system of discretionary secretarial review, such comments are outside the scope of this rulemaking.

DOL did not consider any other aspects of its administrative adjudicative processes, either explicitly or implicitly, as part of this rulemaking. As such, DOL declines to address any comments unrelated to this very narrow rulemaking.

IV. Rulemaking Analyses and Notices

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has been drafted and reviewed in accordance with Executive Order 12866. The Department of Labor, in coordination with the Office of Management and Budget (OMB), determined that this rule is not a significant regulatory action under section 3(f) of Executive Order 12866 because the rule will not have an annual effect on the economy of \$100 million or more; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; and will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Furthermore, the rule does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Accordingly, OMB has waived review.⁴

Regulatory Flexibility Act of 1980

Because no notice of proposed rulemaking was required for this rule under section 553 of the Administrative Procedure Act, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 603, 604, do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

The Department has determined that this rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, as this rulemaking does not involve any collections of information. See 5 CFR 1320.3(c).

Unfunded Mandates Reform Act of 1995 and Executive Order 13132, Federalism

The Department has reviewed this rule in accordance with the requirements of Executive Order 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, and has found no potential or substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, local, and tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

The Department has reviewed this rule in accordance with Executive Order 13175 and has determined that it does not have “tribal implications.” The rule does not “have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government

⁴ One commenter objected to the lack of a cost–benefit analysis. This rule reflects revisions to the Department’s internal review processes, which do not change any party’s substantive rights or obligations. As discussed above, these internal Departmental revisions do not raise applicable novel issues nor are they expected to have an annual effect of \$100 million or more.

and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

List of Subjects

20 CFR Part 641

Administrative practice and procedure, Grievance procedure and appeals process, Senior Community Service Employment Program, Services to participants.

20 CFR Part 655

Administrative practice and procedure, Labor certification processes for temporary employment.

20 CFR Part 656

Administrative practice and procedure, Fraud, Reporting and recordkeeping requirements, Wages.

20 CFR Part 658

Administrative practice and procedure, Complaint system; Discontinuation of services, State workforce agency compliance, Federal application of remedial action to state workforce agencies, Wagner-Peyser Act Employment Service.

20 CFR Part 667

Adjudication and Judicial Review, Administrative practice and procedure; Oversight and monitoring, Grievance procedures, complaints, and state appeal processes, Sanctions, corrective actions, and waiver of liability, Reporting and recordkeeping requirements, Resolution of findings, Workforce Investment Act.

20 CFR Part 683

Adjudication and judicial review, Administrative practice and procedure, Funding and closeout, Grievance procedures, complaints, and State appeal processes; Oversight and resolution of findings, Pay-for-performance contract strategies, Reporting and recordkeeping requirements, Rules, costs, and limitations, Sanctions, corrective actions, and waiver of liability, Workforce Innovation And Opportunity Act.

20 CFR Part 702

Administrative practice and procedure, Claims, Penalties, Reporting and recordkeeping requirements, Whistleblowing, Workers' compensation.

29 CFR Part 2

Administrative practice and procedure, Claims, Courts, Government employees.

29 CFR Part 7

Administrative practice and procedure, Government contracts, Minimum wages.

29 CFR Part 8

Administrative practice and procedure, Government contracts, Minimum wages.

29 CFR Part 10

Administrative practice and procedure, Construction industry, Government procurement, Law enforcement, Reporting and recordkeeping requirements, Wages.

29 CFR Part 13

Administrative practice and procedure, Government contracts, Law enforcement, Reporting and recordkeeping requirements, Wages.

29 CFR Part 18

Administrative practice and procedure

29 CFR Part 24

Administrative practice and procedure, Review of other proceedings and related matters, Review of wage determinations.

29 CFR Part 29

Administrative practice and procedure, Apprenticeship programs, Labor standards, State apprenticeship agencies.

29 CFR Part 38

Administrative practice and procedure, Compliance procedures, Obligations of recipients and governors, Workforce Innovation and Opportunity Act.

29 CFR Part 96

Administrative practice and procedure, Audit requirements, Grants, contracts, and other agreements.

29 CFR Part 471

Administrative practice and procedure, Complaint procedures, Compliance review, Contractor obligations, Federal labor law.

29 CFR Part 501

Administrative practice and procedure, Contract obligations; Enforcement, Immigration and Nationality Act, Temporary alien agricultural workers.

29 CFR Part 580

Administrative practice and procedure, Assessing and contesting, Civil money penalties.

29 CFR Part 1978

Administrative practice and procedure; Employee protection; Findings, Investigations, Litigation, Retaliation complaints, Surface Transportation Assistance Act of 1982.

29 CFR Part 1979

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, Retaliation complaints, Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.

29 CFR Part 1980

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Retaliation complaints, Sarbanes-Oxley Act of 2002.

29 CFR Part 1981

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, Pipeline Safety Improvement Act of 2002, Retaliation complaints.

29 CFR Part 1982

Administrative practice and procedure, Employee protection, Federal Railroad Safety Act, Findings, Investigations, Litigation, National Transit Systems Security Act, Retaliation complaints.

29 CFR Part 1983

Administrative practice and procedure, Consumer Product Safety Improvement Act of 2008, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1984

Administrative practice and procedure, Affordable Care Act, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1985

Administrative practice and procedure, Consumer Financial Protection Act of 2010, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1986

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Retaliation complaints, Seaman's Protection Act.

29 CFR Part 1987

Administrative practice and procedure, Employee protection, FDA Food Safety Modernization Act, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1988

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Moving Ahead for Progress in the 21st Century Act, Retaliation complaints.

41 CFR Part 50-203

Administrative practice and procedure, Government procurement, Minimum wages, Occupational safety and health.

41 CFR Part 60-30

Administrative practice and procedure, Equal opportunity, Executive Order 11246, Property management, Public contracts.

Dated: May 15, 2020.

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Eugene Scalia,

Secretary of Labor

For the reasons set forth in the preamble, the Department of Labor amends 20 CFR chapters V and VI; 29 CFR subtitle A and chapters IV, V, and XVII, and 41 CFR parts 50-203 and 60-30 as follows:

Title 20: Employees' Benefits

Employment and Training Administration

PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE

EMPLOYMENT PROGRAM

1. The authority citation for part 641 continues to read as follows:

Authority: 42 U.S.C. 3056 et seq.; Pub. L. 114-144, 130 Stat. 334 (Apr. 19, 2016).

2. In § 641.900, revise paragraph (e) to read as follows:

§ 641.900 What appeal process is available to an applicant that does not receive a grant?

* * * * *

(e) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken. The mailing address for the ARB is 200 Constitution Ave. NW, Room N5404, Washington, DC 20210. The Department will deem any exception not specifically urged to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

* * * * *

3. In § 641.920, revise paragraph (d)(5) to read as follows:

§ 641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?

* * * * *

(d) * * *

(5) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the ARB (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken. The mailing address for the ARB is 200 Constitution Ave. NW, Room N5404, Washington, DC 20210. The Department will deem any exception not specifically argued to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

4. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d);

sec. 3(c)(1), Pub.L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub.L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub.L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub.L. 103–206, 107 Stat. 2428; sec. 412(e), Pub.L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub.L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub.L. 107–296, 116 Stat. 2135, as amended; Pub.L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub.L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub.L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub.L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub.L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub.L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub.L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub.L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub.L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

5. In § 655.171, revise paragraphs (a) and (b)(2) to read as follows:

§ 655.171 Appeals.

* * * * *

(a) *Administrative review.* Where the employer has requested administrative review, within 5 business days after receipt of the ETA administrative file the ALJ will, on the basis of the written record and after due consideration of any written submissions (which may not include new evidence) from the parties involved or amici curiae, either affirm, reverse, or modify the CO's decision, or remand to the CO for further action. The decision of the ALJ must specify the reasons for the action taken and must be immediately provided to the employer, the CO, the OFLC Administrator and DHS by means normally assuring next-day delivery.

(b) * * *

(2) *Decision.* After a de novo hearing, the ALJ must affirm, reverse, or modify the CO's determination, or remand to the CO for further action, except in cases over which the Secretary has assumed jurisdiction pursuant to 29 CFR 18.95. The decision of the ALJ must specify the reasons for the action taken and must be immediately provided to the employer, CO, OFLC Administrator, and DHS by means normally assuring next-day delivery.

6. In § 655.181, revise paragraph (b)(3) to read as follows:

§ 655.181 Revocation.

* * * * *

(b) * * *

(3) *Appeal.* An employer may appeal a Notice of Revocation, or a final determination of the OFLC Administrator after the review of rebuttal evidence, according to the appeal procedures of § 655.171.

* * * * *

7. In § 655.182, revise paragraph (f)(6) to read as follows:

§ 655.182 Debarment.

* * * * *

(f) * * *

(6) *ARB decision.* The ARB's decision must be issued within 90 days from the notice granting the petition and served upon all parties and the ALJ. If the ARB fails to issue a decision within 90 days from the notice granting the petition, the ALJ's decision will be the final agency decision.

* * * * *

8. In § 655.183, revise paragraph (c) to read as follows:

§ 655.183 Less than substantial violations.

* * * * *

(c) *Failure to comply with special procedures.* If the OFLC Administrator determines that the employer has failed to comply with special procedures required pursuant to paragraph (a) of this section, the OFLC Administrator will send a written notice to the employer, stating that the employer's otherwise affirmative H-2A certification determination will be reduced by 25 percent of the total number of H-2A workers requested (which cannot be more than those requested in the previous year) for a period of 1 year. Notice of such a reduction in the number of workers requested will be conveyed to the employer by the OFLC Administrator in the OFLC Administrator's written certification determination. The notice will offer the employer an opportunity to request administrative review or a de novo hearing before an ALJ. If

administrative review or a de novo hearing is requested, the procedures prescribed in § 655.171 will apply, provided that if the ALJ or the Secretary affirms the OFLC Administrator's determination that the employer has failed to comply with special procedures required by paragraph (a) of this section, the reduction in the number of workers requested will be 25 percent of the total number of H-2A workers requested (which cannot be more than those requested in the previous year) for a period of 1 year.

9. In § 655.461, revise paragraph (e) to read as follows:

§ 655.461 Administrative review.

* * * * *

(e) *Scope of review.* BALCA will, except in cases over which the Secretary has assumed jurisdiction pursuant to 29 CFR 18.95, affirm, reverse, or modify the CO's determination, or remand to the CO for further action. BALCA will reach this decision after due consideration of the documents in the Appeal File that were before the CO at the time of the CO's determination, the request for review, and any legal briefs submitted. BALCA may not consider evidence not before the CO at the time of the CO's determination, even if such evidence is in the Appeal File, request for review, or legal briefs.

* * * * *

10. In § 655.472, revise paragraph (b)(3) to read as follows:

§ 655.472 Revocation.

* * * * *

(b) * * *

(3) *Request for review.* An employer may appeal a Notice of Revocation or a final determination of the OFLC Administrator after the review of rebuttal evidence to BALCA, according to the appeal procedures of § 655.461.

* * * * *

11. In § 655.473, revise paragraph (f)(6) to read as follows:

§ 655.473 Debarment.

* * * * *

(f) * * *

(6) *ARB decision.* The ARB's decision must be issued within 90 calendar days from the notice granting the petition and served upon all parties and the ALJ.

12. In § 655.845, revise paragraphs (h) and (i) to read as follows:

§ 655.845 What rules apply to appeal of the decision of the administrative law judge?

(h) The Board's decision shall be issued within 180 calendar days from the date of the notice of intent to review. The Board's decision shall be served upon all parties and the administrative law judge.

(i) After the Board's decision becomes final, the Board shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § 655.850.

**PART 656 LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT
OF ALIENS IN THE UNITED STATES**

13. The authority citation for part 656 continues to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A), 1182(p)(1); sec.122, Public Law 101–649, 109 Stat. 4978; and Title IV, Public Law 105–277, 112 Stat. 2681.

14. In § 656.27, revise paragraph (c) to read as follows:

§ 656.27 Consideration by and decisions of the Board of Alien Labor Certification Appeals.

* * * * *

(c) *Review on the record.* The Board of Alien Labor Certification Appeals must review a denial of labor certification under § 656.24, a revocation of a certification under § 656.32, or an affirmation of a prevailing wage determination under § 656.41 on the basis of the record upon which the decision was made, the request for review, and any Statements of Position or legal briefs submitted and, except in cases over which the Secretary has assumed jurisdiction pursuant to 29 CFR 18.95, must:

(1) Affirm the denial of the labor certification, the revocation of certification, or the affirmation of the PWD; or

(2) Direct the Certifying Officer to grant the certification, overrule the revocation of certification, or overrule the affirmation of the PWD; or

(3) Direct that a hearing on the case be held under paragraph (e) of this section.

* * * * *

PART 658 ADMINISTRATIVE PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

15. The authority citation for part 658 continues to read as follows:

Authority: Secs. 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B.

16. In § 658.711, revise paragraph (b) to read as follows:

§ 658.711 Decision of the Administrative Review Board.

* * * * *

(b) The decision of the Administrative Review Board must be in writing, and must set forth the factual and legal basis for the decision. After the Board's decision becomes final, notice of the decision must be published in the Federal Register, and copies must be made available for public inspection and copying.

**PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE
WORKFORCE INVESTMENT ACT**

17. The authority citation for part 667 continues to read as follows:

Authority: Subtitle C of Title I, Sec. 506(c), Pub. L. 105-220, 112 Stat. 936 (20 U.S.C. 9276(c)); Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

18. In § 667.830, revise paragraph (b) to read as follows:

§ 667.830 When will the Administrative Law Judge issue a decision?

* * * * *

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for

review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

PART 683—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

19. The authority citation for part 683 continues to read as follows:

Authority: Secs. 102, 116, 121, 127, 128, 132, 133, 147, 167, 169, 171, 181, 185, 189, 195, 503, Public Law 113-128, 128 Stat. 1425 (Jul. 22, 2014).

20. In § 683.830, revise paragraph (b) to read as follows:

§ 683.830 When will the Administrative Law Judge issue a decision?

* * * * *

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically raised in the petition is deemed to have been waived. A copy of the petition for review also must be sent to the opposing party and if an applicant or recipient, to the Grant Officer and the Grant Officer's Counsel at the time of filing. Unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review, the decision of the ALJ constitutes final agency action. In any case accepted by the

ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

Office of Workers' Compensation Programs Longshoremen's and Harbor Workers' Compensation Act and Related Statutes

PART 702 ADMINISTRATION AND PROCEDURE

21. The authority citation for part 702 continues to read as follows:

Authority: 5 U.S.C. 301, and 8171 et seq.; 33 U.S.C. 901 et seq.; 42 U.S.C. 1651 et seq.; 43 U.S.C. 1333; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub.L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 10–2009, 74 FR 58834.

22. In § 702.433, revise paragraphs (e) and (f) to read as follows:

§ 702.433 Requests for hearing.

* * * * *

(e) The administrative law judge will issue a recommended decision after the termination of the hearing. The recommended decision must contain appropriate findings, conclusions, and a recommended order and be forwarded, together with the record of the hearing, to the Administrative Review Board for a decision. The recommended decision must be served upon all parties to the proceeding.

(f) Based upon a review of the record and the recommended decision of the administrative law judge, the Administrative Review Board will issue a decision.

23. Revise § 702.434 to read as follows:

§ 702.434 Judicial review.

(a) Any physician, health care provider, or claims representative who participated as a party in the hearing may obtain review of the Department's final decision made by the Administrative Review Board or the Secretary, as appropriate, regardless of the amount of controversy, by commencing a civil action within sixty (60) days after the decision is transmitted to him or her. The pendency of such review will not stay the effect of the decision. Such action must be brought in the Court of Appeals of the United States for the judicial circuit in which the plaintiff resides or has his or her principal place of business, or the Court of Appeals for the District of Columbia pursuant to section 7(j)(4) of the Act, 33 U.S.C. 907(j)(4).

(b) As part of the Department's answer, the Administrative Review Board must file a certified copy of the transcript of the record of the hearing, including all evidence submitted in connection therewith.

(c) The findings of fact contained in the Department's final decision, if based on substantial evidence in the record as a whole, shall be conclusive.

Title 29: Labor

Office of the Secretary of Labor

PART 2—GENERAL REGULATIONS

24. The authority citation for part 2 continues to read as:
Authority: 5 U.S.C. 301; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258; Executive Order 13559, 75 FR 71319, 3 CFR 2011 Comp., p. 273.

25. Revise § 2.8 to read as follows:

§ 2.8 Final agency decisions.

Final agency decisions issued under the statutory authority of the U.S. Department of Labor may be issued by the Secretary of Labor, or by his or her designee under a written delegation of authority. The Administrative Review Board, an organizational entity within the Office of the Secretary, has been delegated authority to issue final agency decisions under the statutes, executive orders, and regulations according to, and except as provided in Secretary's Order 01-2020 (or any successor to that order).

PART 7—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

26. The authority citation for part 7 continues to read as:

Authority: Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301; 3 CFR, 1949–1953 Comp., p. 1007; sec. 2, 48 Stat. 948 as amended; 40 U.S.C. 276c; secs. 104, 105, 76 Stat. 358, 359; 40 U.S.C. 330, 331; 65 Stat. 290; 36 FR 306, 8755.

27. In § 7.1, revise paragraph (d) to read as follows:

§ 7.1 Purpose and scope.

* * * * *

(d) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary of Labor. The Board shall act as fully and finally as might the Secretary of Labor concerning such matters, except as provided in Secretary's Order 01-2020 (or any successor to that order).

* * * * *

PART 8—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL SERVICE CONTRACTS

28. The authority citation for part 8 continues to read as:

Authority: Secs. 4 and 5, 79 Stat. 1034, 1035, as amended by 86 Stat. 789, 790, 41 U.S.C. 353, 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 76 Stat. 357–359, 40 U.S.C. 327–332.

29. In § 8.1, revise paragraph (c) to read as follows:

§ 8.1 Purpose and scope.

* * * * *

(c) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary of Labor and shall act as fully and finally as might the Secretary of Labor concerning such matters, except as provided in Secretary's Order 01-2020 (or any successor to that order).

* * * * *

PART 10—ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS

30. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 301; section 2, E.O. 13838, 83 FR 25341; section 4, E.O. 13658, 79 FR 9851; Secretary's Order 01–2014, 79 FR 77527.

31. Revise § 10.57 to read as follows:

§ 10.57 Administrative Review Board proceedings.

(a) *Authority—(1) General.* The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from investigative

findings letters of the Administrator issued under § 10.51(c)(1) or (2), Administrator's rulings issued under § 10.58, and decisions of Administrative Law Judges issued under § 10.55.

(2) *Limit on scope of review.* (i) The Board shall not have jurisdiction to pass on the validity of any provision of this part. The Board is an appellate body and shall decide cases properly before it on the basis of substantial evidence contained in the entire record before it. The Board shall not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, the Administrative Review Board shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Decisions.* The Board's decision shall be issued within a reasonable period of time following receipt of the petition for review and shall be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders.* If the Board concludes a violation occurred, an order shall be issued mandating action to remedy the violation, including, but not limited to, monetary relief for unpaid wages. Where the Administrator has sought imposition of debarment, the Board shall determine whether an order imposing debarment is appropriate. The ARB's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

PART 13—ESTABLISHING PAID SICK LEAVE FOR FEDERAL CONTRACTORS

32. The authority citation for part 13 continues to read as follow:

Authority: 5 U.S.C. 301; E.O. 13706, 80 FR 54697, 3 CFR, 2016 Comp., p. 367; Secretary's Order 01–2014, 79 FR 77527.

33. Revise § 13.57 to read as follows:

§ 13.57 Administrative Review Board proceedings.

(a) *Authority*—(1) *General*. The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from investigative findings letters of the Administrator issued under § 13.51(c)(1) or the final sentence of § 13.51(c)(2)(ii), Administrator's rulings issued under § 13.58, and decisions of Administrative Law Judges issued under § 13.55.

(2) *Limit on scope of review*. (i) The Administrative Review Board shall not have jurisdiction to pass on the validity of any provision of this part. The Administrative Review Board is an appellate body and shall decide cases properly before it on the basis of substantial evidence contained in the entire record before it. The Administrative Review Board shall not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, the Administrative Review Board shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Decisions*. The Administrative Review Board's decision shall be issued within a reasonable period of time following receipt of the petition for review and shall be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders*. If the Board concludes a violation occurred, an order shall be issued mandating action to remedy the violation, including, but not limited to, any monetary or equitable relief described in § 13.44. Where the Administrator has sought imposition of debarment, the Administrative Review Board shall determine whether an order imposing debarment is appropriate. The ARB's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

PART 18—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

34. The authority citation for part 18 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 551–553; 5 U.S.C. 571 note; E.O. 12778; 57 Fed. Reg. 7292.

35. Revise § 18.95 to read as follows:

§ 18.95 Review of decision and review by the Secretary.

(a) *Review*. The statute or regulation that conferred hearing jurisdiction provides the procedure for review of a judge's decision. If the statute or regulation does not provide a procedure, the judge's decision becomes the Secretary's final administrative decision, except as provided in paragraph (b) of this section.

(b) *Finality*. A decision of the Board of Alien Labor Certification Appeals (BALCA) shall constitute the Secretary's final administrative decision except in those cases over which the Secretary has, in accordance with this paragraph (b) and paragraph (c) of this section, assumed jurisdiction:

(1) In any case for which administrative review is sought or handled in accordance with 20 CFR 655.171(a) or 20 CFR 655.461, at any point from when the BALCA receives a request

for review until the passage of 10 business days after the date on which BALCA has issued its decision.

(2) In any case for which a de novo hearing is sought or handled under 20 CFR 655.171(b), at any point within 15 business days after the date on which the BALCA has issued its decision.

(3) In any case for which review is sought or handled in accordance with 20 CFR 656.26 and 20 CFR 656.27, at any point from when the BALCA receives a request for review until the passage of 30 business days after the BALCA has issued its decision.

(c) *Review by the Secretary*—(1) *Transmission of information.* (i) Whenever the BALCA receives a request for review, it shall immediately transmit a copy of such request to the Deputy Secretary.

(ii) Within 3 business days of when the BALCA issues a decision, the Chair of the BALCA, or his or her designee, shall transmit to the Deputy Secretary a copy of the decision and a concise recommendation as to whether the decision involves an issue or issues of such exceptional importance that review by the Secretary is warranted.

(2) *Review.* (i) The Secretary may, at any point within the time periods provided for in paragraph (b) of this section, and in his or her sole discretion, assume jurisdiction to review the decision or determination of the Certifying Officer, the Office of Foreign Labor Certification Administrator, the National Prevailing Wage Center Director, or the BALCA, as the case may be.

(ii) When the Secretary assumes jurisdiction over a case, the Secretary shall promptly notify the BALCA. The BALCA shall promptly notify the parties to the case of such action and shall submit the Appeal File and any briefs filed to the Secretary.

(iii) In any case the Secretary decides, the Secretary's decision shall be stated in writing and transmitted to the BALCA, which shall promptly publish the decision and transmit it to the parties to the case. Such decision shall constitute final action by the Department and shall serve as binding precedent on all Department employees and in all Department proceedings involving the same issue or issues.

(iv) The Solicitor of Labor, or his or her designee, shall have the responsibility for providing legal advice to the Secretary with respect to the Secretary's exercise of review under this section, except that no individual involved in the investigation or prosecution of a case shall advise the Secretary on the exercise of review with respect to such case or a case involving a common nucleus of operative fact.

**PART 24—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS
UNDER THE EMPLOYEE PROTECTION PROVISIONS OF SIX ENVIRONMENTAL
STATUTES AND SECTION 211 OF THE ENERGY REORGANIZATION ACT OF 1974,
AS AMENDED**

36. The authority citation for part 24 is revised to read as follows:

Authority: 15 U.S.C. 2622; 33 U.S.C. 1367; 42 U.S.C. 300j-9(i)BVG, 5851, 6971, 7622, 9610; Secretary's Order No. 5-2007, 72 FR 31160 (June 5, 2007); Secretary's Order No. 01-2020.

37. In § 24.110, revise paragraphs (a), (c), and (d) to read as follows:

§ 24.110 Decisions and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210. The decision of the ALJ will become the final order of the

Secretary unless, pursuant to this section, a timely petition for review is filed with the ARB and the ARB accepts the case for review. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections will ordinarily be deemed waived. A petition must be filed within 10 business days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 90 days of the filing of the complaint. The decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the order will order the respondent to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of employment, and compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate. At the request of the complainant, the ARB

will assess against the respondent all costs and expenses (including attorney's fees) reasonably incurred.

* * * * *

38. Revise § 24.112 to read as follows:

§ 24.112 Judicial Review.

(a) Except as provided under paragraphs (b) through (d) of this section, within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the ARB (or a decision issued by the Secretary upon his or her discretionary review) is not subject to judicial review in any criminal or other civil proceeding.

(b) Under the Federal Water Pollution Control Act, within 120 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(c) Under the Solid Waste Disposal Act, within 90 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a

petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(d) Under the Comprehensive Environmental Response, Compensation and Liability Act, after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States district court in which the violation allegedly occurred. For purposes of judicial economy and consistency, when a final order under the Comprehensive Environmental Response, Compensation and Liability Act also is issued under any other statute listed in § 24.100(a), the adversely affected or aggrieved person may file a petition for review of the entire order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. The time for filing a petition for review of an order issued under the Comprehensive Environmental Response, Compensation and Liability Act and any other statute listed in § 24.100(a) is determined by the time period applicable under the other statute(s).

(e) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the ARB or the ALJ, as appropriate, to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of the court.

PART 29—LABOR STANDARDS FOR THE REGISTRATION OF APPRENTICESHIP PROGRAMS

39. The authority citation for part 29 continues to read as follows:

Authority: Section 1, 50 Stat. 664, as amended (29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301); Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 U.S.C. App. P. 534).

40. In § 29.10, revise paragraph (c) to read as follows:

§ 29.10 Hearings for deregistration.

* * * * *

(c) The Administrative Law Judge should issue a written decision within 90 days of the close of the hearing record. The Administrative Law Judge's decision constitutes final agency action unless, within 15 days from receipt of the decision, a party dissatisfied with the decision files a petition for review with the Administrative Review Board, specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review must be sent to the opposing party at the same time. Thereafter, the decision of the Administrative Law Judge remains final agency action unless the Administrative Review Board, within 30 days of the filing of the petition for review, notifies the parties that it has accepted the case for review. The Administrative Review Board may set a briefing schedule or decide the matter on the record. The Administrative Review Board must issue a decision in any case it accepts for review within 180 days of the close of the record. If a decision is not so issued, the Administrative Law Judge's decision constitutes final agency action.

41. In § 29.13, revise paragraph (g)(4) to read as follows:

§ 29.13 Recognition of State Apprenticeship Agencies.

* * * * *

(g) * * *

(4) After the close of the period for filing exceptions and responses, the Administrative Review Board may issue a briefing schedule or may decide the matter on the record before it. The Administrative Review Board must decide any case it accepts for review within 180 days of the close of the record. If a decision is not so issued, the Administrative Law Judge's decision constitutes final agency action.

* * * * *

42. In § 29.14, revise paragraph (c)(3) to read as follows:

§ 29.14 Derecognition of State Apprenticeship Agencies.

* * * * *

(c) * * *

(3) *Requests a hearing.* The Administrator shall refer the matter to the Office of Administrative Law Judges. An Administrative Law Judge will convene a hearing in accordance with § 29.13(g) and submit proposed findings and a recommended decision to the Administrative Review Board. The Administrative Review Board must issue a decision in any case it accepts for review within 180 days of the close of the record. If a decision is not so issued, the Administrative Law Judge's decision constitutes final agency action.

* * * * *

**PART 38—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL
OPPORTUNITY PROVISIONS OF THE WORKFORCE INNOVATION AND
OPPORTUNITY ACT**

43. The authority citation for part 38 continues to read as follows:

Authority: 29 U.S.C. 3101 et seq.; 42 U.S.C. 2000d et seq.; 29 U.S.C. 794; 42 U.S.C. 6101 et seq.; and 20 U.S.C. 1681 et seq.

44. In § 38.112, revise paragraph (b)(1)(viii) to read as follows:

§ 38.112 Initial and final decision procedures.

* * * * *

(b) * * *

(1) * * *

(viii) *Decision and Order after review by Administrative Review Board.* In any case reviewed by the Administrative Review Board under this paragraph, a decision must be issued within 180 days of the notification of such review. If the Administrative Review Board fails to issue a decision and order within the 180-day period, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order.

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45. In § 38.113, revise paragraph (c) to read as follows:

§ 38.113 Suspension, termination, withholding, denial, or discontinuation of financial assistance.

* * * * *

(c) A decision issued by the Administrative Review Board has become final, the Administrative Law Judge's decision and order has become the Final Agency Decision, or the Final Determination or Notification of Conciliation Agreement has been deemed the Final Agency Decision, under § 38.112(b); and

* * * * *

46. In § 38.115, revise paragraph (c)(5) to read as follows:

§ 38.115 Post-termination proceedings.

* * * * *

(c) * * *

(5) The Administrative Review Board must issue a decision denying or granting the recipient's or grant applicant's request for restoration to eligibility.

PART 96—AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS, AND OTHER AGREEMENTS

47. The authority citation for part 96 continues to read as follows:

Authority: 31 U.S.C. 7501 et seq. and OMB Circular No. A-133, as amended.

48. In § 96.63, revise paragraph (b)(5) to read as follows:

§ 96.63 Federal financial assistance.

* * * * *

(b) * * *

(5) *Review by the Administrative Review Board.* In any case accepted for review by the Administrative Review Board, a decision shall be issued within 180 days of such acceptance. If a decision is not so issued, the decision of the Administrative Law Judge shall become the final decision of the Secretary.

Office of Labor-Management Standards

**PART 471—OBLIGATIONS OF FEDERAL CONTRACTORS AND
SUBCONTRACTORS; NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL
LABOR LAWS**

49. The authority citation for part 471 is revised to read as follows:

Authority: 40 U.S.C. 101 et seq.; Executive Order 13496, 74 FR 6107, February 4, 2009; Secretary's Order No. 7-2009, 74 FR 58834, November 13, 2009; Secretary's Order No. 01-2020.

50. In § 471.13, revise paragraph (b)(4) to read as follows:

§ 471.13 Under what circumstances, and how, will enforcement proceedings under Executive Order 13496 be conducted?

* * * * *

(b) * * *

(4) After the expiration of time for filing exceptions, the Administrative Review Board may issue an administrative order, or may otherwise appropriately dispose of the matter. In an expedited proceeding, unless the Administrative Review Board issues an administrative order within 30 days after the expiration of time for filing exceptions, the Administrative Law Judge's recommended decision will become the final administrative order. If the Administrative Review Board determines that the contractor has violated the Executive Order or the regulations in this part, the administrative order will order the contractor to cease and desist from the violations, require the contractor to provide appropriate remedies, or, subject to the procedures in § 471.14, impose appropriate sanctions and penalties, or any combination thereof.

Wage and Hour Division

**PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR
TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION
218 OF THE IMMIGRATION AND NATIONALITY ACT**

51. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114-74 at §701.

52. Revise § 501.45 to read as follows:

§ 501.45 Decision of the Administrative Review Board.

The ARB's decision shall be issued within 90 days from the notice granting the petition and served upon all parties and the ALJ.

**PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND
CONTESTING PENALTIES**

53. The authority citation for part 580 continues to read as follows:

Authority: 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary's Order 01-2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

54. Revise § 580.16 to read as follows:

§ 580.16 Decision of the Administrative Review Board.

The Board's decision shall be served upon all parties and the Chief Administrative Law Judge, in person or by mail to the last known address.

Occupational Safety and Health Administration

**PART 1978—PROCEDURES FOR THE HANDLING OF RETALIATION
COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE
SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 (STAA), AS AMENDED**

55. The authority citation for part 1978 is revised to read as follows:

Authority: 49 U.S.C. 31101 and 31105; Secretary's Order 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01-2020.

56. In § 1978.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1978.110 Decisions and orders of the Administrative Review Board.

(a) The Assistant Secretary or any other party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the

conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision also will be served on the Assistant Secretary, and on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order, which will be subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order), will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position with the same compensation, terms, conditions, and privileges of the complainant's employment; payment of compensatory damages (back pay with interest and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney fees the complainant may have incurred); and payment of punitive damages up to \$250,000. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. Such order will be subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

* * * * *

57. In § 1978.112, revise paragraph (a) to read as follows:

§ 1978.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the person resided on the date of the violation.

* * * * *

**PART 1979—PROCEDURES FOR THE HANDLING OF DISCRIMINATION
COMPLAINTS UNDER SECTION 519 OF THE WENDELL H. FORD AVIATION
INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY**

58. The authority citation for part 1979 continues to read as follows:

Authority: 49 U.S.C. 42121; Secretary's Order No. 01-2020.

59. In § 1979.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1979.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the administrative law judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board ("the Board"). The decision of the Administrative Law Judge shall become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions, or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the Administrative Law Judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the

date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

* * * * *

(c) The decision of the Board shall be issued within 120 days of the conclusion of the hearing, which shall be deemed to be the conclusion of all proceedings before the Administrative Law Judge—i.e., 10 business days after the date of the decision of the Administrative Law Judge unless a motion for reconsideration has been filed with the Administrative Law Judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. The decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the party charged has violated the law, the ARB shall order the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the Board shall assess against the named person all costs and expenses (including attorney and expert witness fees) reasonably

incurred. The ARB's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

(e) If the ARB concludes that the party charged has not violated the law, the ARB shall issue an order denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may award to the named person reasonable attorney fees, not exceeding \$1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

60. In § 1979.112, revise paragraph (a) to read as follows:

§ 1979.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Secretary is not subject to judicial review in any criminal or other civil proceeding.

* * * * *

**PART 1980—PROCEDURES FOR THE HANDLING OF RETALIATION
COMPLAINTS UNDER SECTION 806 OF THE SARBANES-OXLEY ACT OF 2002, AS
AMENDED**

61. The authority citation for part 1980 is revised to read as follows:

Authority: 18 U.S.C. 1514A, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203 (July 21, 2010); Secretary's Order No. 01-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01-2020.

62. In § 1980.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1980.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB shall be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary

and on the Associate Solicitor, Division of Fair Labor Standards, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing all relief necessary to make the complainant whole, including reinstatement with the same seniority status that the complainant would have had but for the retaliation; back pay with interest; and compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney fees. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding \$1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

63. In § 1980.112, revise paragraph (a) to read as follows:

§ 1980.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person

adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

**PART 1981--PROCEDURES FOR THE HANDLING OF DISCRIMINATION
COMPLAINTS UNDER SECTION 6 OF THE PIPELINE SAFETY IMPROVEMENT
ACT OF 2002**

64. The authority citation for part 1981 continues to read as follows:

Authority: 49 U.S.C. 60129; Secretary's Order No. 01-2020.

65. In § 1981.110, revise paragraphs (a), (c), (d), and (e) as follows:

§ 1981.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the Administrative Law Judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board ("the Board"). The decision of the Administrative Law Judge will become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions, or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. To be effective, a petition must be filed within 10 business days of the date of the decision of the Administrative Law Judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties

and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

* * * * *

(c) The decision of the Board shall be issued within 90 days of the conclusion of the hearing, which will be deemed to be the conclusion of all proceedings before the Administrative Law Judge—i.e., 10 business days after the date of the decision of the Administrative Law Judge unless a motion for reconsideration has been filed with the Administrative Law Judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. The decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the party charged has violated the law, the ARB shall order the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the Board shall assess against the named person all costs and expenses (including attorney and expert witness fees) reasonably incurred. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

(e) If the ARB concludes that the party charged has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may award to the named person reasonable attorney fees, not exceeding \$1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

66. In § 1981.112, revise paragraph (a) to read as follows:

§ 1981.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Secretary is not subject to judicial review in any criminal or other civil proceeding.

* * * * *

**PART 1982--PROCEDURES FOR THE HANDLING OF RETALIATION
COMPLAINTS UNDER THE NATIONAL TRANSIT SYSTEMS SECURITY ACT AND
THE FEDERAL RAILROAD SAFETY ACT**

67. The authority citation for part 1982 is revised to read as follows:

Authority: 6 U.S.C. 1142 and 49 U.S.C. 20109; Secretary's Order 01-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01-2020.

68. In § 1982.110, revise paragraph (a) and add paragraphs (c), (d), and (e) to read as follows:

§ 1982.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint under NTSSA was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB.

The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is denied or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision also will be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will include, where appropriate, affirmative action to abate the violation; reinstatement with the same seniority status that the employee would have had but for the retaliation; any back pay with interest; and payment of compensatory damages, including compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney fees. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit documentation to the Social Security Administration or the Railroad Retirement Board, as appropriate, allocating any back pay award to the appropriate months or calendar quarters. The order may also require the respondent to pay punitive damages up to \$250,000. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint under NTSSA was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding \$1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

69. In § 1982.112, revise paragraph (a) to read as follows:

§ 1982.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person

adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

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**PART 1983—PROCEDURES FOR THE HANDLING OF RETALIATION
COMPLAINTS UNDER SECTION 219 OF THE CONSUMER PRODUCT SAFETY
IMPROVEMENT ACT OF 2008**

70. The authority citation for part 1983 is revised to read as follows:

Authority: 15 U.S.C. 2087; Secretary's Order 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01-2020.

71. In § 1983.110, revise paragraphs (a), (c), (d), and (e) as follows:

§ 1983.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent a reasonable attorney's fee, not exceeding \$1,000. An order under this section is subject to

discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

72. In § 1983.112, revise paragraph (a) to read as follows:

§ 1983.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

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**PART 1984—PROCEDURES FOR THE HANDLING OF RETALIATION
COMPLAINTS UNDER SECTION 1558 OF THE AFFORDABLE CARE ACT**

73. The authority citation for part 1984 is revised to read as follows:

Authority: 29 U.S.C. 218C; Secretary's Order 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01-2020.

74. In § 1984.110, revise paragraphs (a), (c), (d), and (e) as follows:

§ 1984.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the Administrative Review Board (ARB). The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed

within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

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(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to the complainant's former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be

calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate period. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding \$1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

75. In § 1984.112, revise paragraph (a) to read as follows:

§ 1984.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

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**PART 1985—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS
UNDER THE EMPLOYEE PROTECTION PROVISION OF THE CONSUMER
FINANCIAL PROTECTION ACT OF 2010**

76. The authority citation for part 1985 is revised to read as follows:

Authority: 12 U.S.C. 5567; Secretary's Order No. 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01-2020.

77. In § 1985.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1985.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary and on the Associate

Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding \$1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

78. In § 1985.112, revise paragraph (a) to read as follows:

§ 1985.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

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**PART 1986—PROCEDURES FOR THE HANDLING OF RETALIATION
COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE
SEAMAN'S PROTECTION ACT (SPA), AS AMENDED**

79. The authority citation for part 1986 is revised to read as follows:

Authority: 46 U.S.C. 2114; 49 U.S.C. 31105; Secretary's Order 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01-2020.

80. In § 1986.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1986.110 Decisions and orders of the Administrative Review Board.

(a) The Assistant Secretary or any other party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the

Assistant Secretary and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision also will be served on the Assistant Secretary and on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, with the same compensation, terms, conditions, and privileges of the complainant's employment; payment of compensatory damages (back pay with interest and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney fees the complainant may have incurred); and payment of punitive damages up to \$250,000. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

81. In § 1986.112, revise paragraph (a) to read as follows:

§ 1986.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the court of appeals of the United States for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

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**PART 1987—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS
UNDER SECTION 402 OF THE FDA FOOD SAFETY MODERNIZATION ACT**

82. The authority citation for part 1987 is revised to read as follows:

Authority: 21 U.S.C. 399d; Secretary's Order No. 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01-2020.

83. In § 1987.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1987.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the

objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case the conclusion of the hearing is the date the motion for reconsideration is denied or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated

using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding \$1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

84. In § 1987.112, revise paragraph (a) to read as follows:

§ 1987.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

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**PART 1988—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS
UNDER SECTION 31307 OF THE MOVING AHEAD FOR PROGRESS IN THE 21ST
CENTURY ACT (MAP-21)**

85. The authority citation for part 1988 is revised to read as follows:

Authority: 49 U.S.C. 30171; Secretary's Order No. 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01-2020.

86. In § 1988.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1988.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge by mail. The decision will also be served on the Assistant Secretary and on the Associate

Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding \$1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

87. In § 1988.112, revise paragraph (a) to read as follows:

§ 1988.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

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Title 41: Public Contracts and Property Management

Office of Federal Contract Compliance Programs

PART 50-203 RULES OF PRACTICE

88. The authority citation for part 50-203 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38, unless otherwise noted.

89. In § 50–203.21, revise paragraph (d) to read as follows:

§ 50–203.21 Decisions.

* * * * *

(d) Thereafter, the Administrative Review Board may issue a decision ruling upon each exception filed and including any appropriate wage determination. Any such decision shall be published in the Federal Register after it becomes the final action of the Department.

PART 60-30 RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246

90. The authority citation for part 60-30 continues to read as follows:

Authority: Executive Order 11246, as amended, 30 FR 12319, 32 FR 14303, as amended by E.O. 12086; 29 U.S.C. 793, as amended, and 38 U.S.C. 4212, as amended.

91. Revise § 60-30.29 to read as follows:

§ 60–30.29 Record.

After expiration of the time for filing briefs and exceptions, the Administrative Review Board, United States Department of Labor, shall make a decision, which shall be the Administrative order, on the basis of the record. The record shall consist of the record for recommended decision, the rulings and recommended decision of the Administrative Law Judge and the exceptions and briefs filed subsequent to the Administrative Law Judge's decision.

92. Revise § 60-30.30 to read as follows:

§ 60–30.30 Administrative Order.

After expiration of the time for filing, the Administrative Review Board, United States Department of Labor, shall make a decision which shall be served on all parties. If the Administrative Review Board, United States Department of Labor, concludes that the defendant has violated the Executive Order, the equal opportunity clause, or the regulations, an Administrative Order shall be issued enjoining the violations, and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative Order shall result in the immediate cancellation, termination, and suspension of the respondent's contracts and/or debarment of the respondent from further contracts.

93. Revise § 60-30.37 to read as follows:

§ 60–30.37 Final Administrative Order.

After expiration of the time for filing exceptions, the Administrative Review Board, United States Department of Labor, shall issue an Administrative Order which shall be served on

all parties. Unless the Administrative Review Board, United States Department of Labor, issues an Administrative Order within 30 days after the expiration of the time for filing exceptions, the Administrative Law Judge's recommended decision shall become a final Administrative Order which shall become effective on the 31st day after expiration of the time for filing exceptions. Except as to specific time periods required in this subsection, 41 CFR 60–30.30 shall be applicable to this section.

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